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## Notice of Rulemaking Hearing

*Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. §4-5-204. For questions and copies of the notice, contact the person listed below.*

<b>Agency/Board/Commission:</b>	Environment and Conservation
<b>Division:</b>	Water Resources
<b>Contact Person:</b>	Bob O'Dette
<b>Address:</b>	6 <sup>th</sup> Floor, L & C Annex 401 Church Street Nashville, Tennessee 37243-1531
<b>Phone:</b>	(615) 253-5319
<b>Email:</b>	<a href="mailto:Robert.Odette@tn.gov">Robert.Odette@tn.gov</a>

*Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:*

<b>ADA Contact:</b>	ADA Coordinator
<b>Address:</b>	12 <sup>th</sup> Floor L&C Tower 401 Church Street Nashville, Tennessee 37243
<b>Phone:</b>	1-866-253-5827 (toll free) or (615) 532-0200 Hearing impaired callers may use the TN Relay Service at 1-800-848-0298.
<b>Email:</b>	<a href="mailto:Beverly.Evans@tn.gov">Beverly.Evans@tn.gov</a>

**Hearing Location(s)** (for additional locations, copy and paste table)

Address 1:	17 <sup>th</sup> Floor Conference Room A, L & C Tower		
Address 2:	401 Church Street		
City:	Nashville, Tennessee		
Zip:	37243		
Hearing Date :	04/09/13		
Hearing Time:	9:00 a.m.	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

**Additional Hearing Information:**

This rulemaking is intended to move the rules from Chapter 1200-04-01 to Chapter 0400-40-01 and to edit the document to correct typos and incorrect references.

Oral or written comments are invited at the hearing. In addition, written comments may be submitted prior to or after the public hearing to: Tennessee Department of Environment and Conservation, Water Resources Division; Attention: Mr. Bob O'Dette, 6<sup>th</sup> Floor, L & C Annex; 401 Church Street; Nashville, Tennessee 37243; telephone 615-532-0445 or fax 615-532-0199. However, such written comments must be received by 4:30 PM CDT, April 9, 2013, in order to assure consideration. For further information, please contact Mr. Bob O'Dette at the above address or telephone number or by e-mail at [Robert.Odette@tn.gov](mailto:Robert.Odette@tn.gov).

**Revision Type (check all that apply):**

☐ Amendment  
☒ New  
☒ Repeal

**Rule(s)** (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. Please enter only **ONE** Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
0400-40-01	General
Rule Number	Rule Title
0400-40-01-.01	Purpose
0400-40-01-.02	Board of Water Quality, Oil and Gas, Duties and Authority Procedures
0400-40-01-.03	Commissioner's Responsibilities and Authority
0400-40-01-.04	Information - Procurement, Release and Distribution

Chapter Number	Chapter Title
1200-04-01	General
Rule Number	Rule Title
1200-04-01-.01	Purpose
1200-04-01-.02	Water Quality Control Board, Duties and Authority Procedures
1200-04-01-.03	Commissioner's Responsibilities and Authority
1200-04-01-.04	Information - Procurement, Release and Distribution
1200-04-01-.05	Reserved
1200-04-01-.06	Reserved
1200-04-01-.07	Reserved

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

## Repeal

### Chapter 1200-04-01 General

Chapter 1200-04-01 General is repealed.

Authority: T.C.A. §§ 69-3-101 et seq. and 4-5-201 et seq.

## New Rules

### Chapter 0400-40-01 General

#### Table of Contents

0400-40-01-.01 Purpose  
0400-40-01-.02 Board of Water Quality, Oil and Gas, Duties and Authority Procedures  
0400-40-01-.03 Commissioner's Responsibilities and Authority  
0400-40-01-.04 Information - Procurement, Release and Distribution

0400-40-01-.01 Purpose.

- (1) The stated purposes of the Water Quality Control Act of 1977 (the act) in T.C.A. § 69-3-102(b) shall not be construed as meaning that the state is obligated to achieve these purposes in the order that they appear; that is, the state may pursue one without having fully achieved all previous stated purposes.

Authority: T.C.A. §§ 69-3-101 et seq. and 4-5-201 et seq.

0400-40-01-.02 Board of Water Quality, Oil and Gas, Duties and Authority Procedures.

#### (1) Duties and Authority

- (a) The Board shall hold public hearings for the purpose of classifying or reclassifying waters of the state; adopting, readopting, amending or revising standards of quality for state waters; adopting, revising, or repealing effluent standards and limitations; adopting, modifying, repealing and/or promulgating necessary rules and regulations; and to formulate and adopt a State Water Quality Plan pursuant to T.C.A. § 69-3-105(e). Any of the above stated actions may be conducted by the Board.
- (b) In addition to the foregoing, the board, or any member or members thereof, or a hearing officer designated by the chair, shall hold hearings to review orders of the Commissioner including denial, terms, or conditions of permits.

#### (2) Procedures

- (a) Prior to a public hearing by the Board on any subject as detailed in subparagraph (1)(a) of this rule, the Director shall give notice in at least one newspaper of general circulation within the area of the state in which the water affected is located. Notice will also be mailed to persons who have requested that they be notified of all board hearings. The notice shall state the date, time, place and subject of the hearing and shall be given at least 30 days in advance of the hearing. Notice shall also be provided electronically, where appropriate.
- (b) Should any person, other than the department or its representative, desire an audience before the Board upon the subject announced, that person should file a written notice with the Commissioner at the hearing.

- (c) Every person who desires an audience, and who complies with the provisions of subparagraph (b) of this paragraph shall be granted an opportunity to present his/her views or argument at the Board's discretion.

- (3) All matters which the Department or its representative, the Division of Water Resources, wishes to present to the board may be submitted in writing to the Board on or before the date of said hearing or presented orally to the Board at the hearing. Should any person wish to petition the Board to reclassify any state water(s) or interstate waters, or to make a change in any rule, regulation, effluent standard or limitation or water quality standards previously adopted by the Board, such person shall petition the Board in writing. A petition should be typed on 8 1/2 x 11 inch sized paper, filed with the Commissioner in duplicate, addressed to the board, and should state in a concise manner, the subject of the petition and reasons for a proposed change. The Board chair shall set a hearing date as soon as possible, and shall hear oral argument from the petitioner and the Department, as well as other interested parties, with regard to petitioner's proposed change. The Board, by a majority vote, shall decide whether the petition for a change in regulations and/or water classification is meritorious, and render its decision in writing to the petitioner within 30 days after the hearing. Should said petition be of merit, the Board shall set a date for a public hearing on the matter, or may use the date of an already scheduled public hearing; but in any event, the Board shall give notice of a public hearing as set out in subparagraph (2)(a) of this rule. For the purpose of this provision, a majority of the Board is a quorum as set forth in T.C.A. § 69-3-104(d), a majority vote of which shall constitute a final determination of the Board.

If the petition concerns the reclassification of an interstate water or waters, the Division of Water Resources shall meet and confer with appropriate federal authorities on possible changes in the classification of such waters prior to any public hearing by the Board as provided in this paragraph and in T.C.A. § 69-3-105(d). At a public hearing, federal authorities may be present and heard by the Board.

Any person desiring a hearing by the Board relative to the actions by the Commissioner outlined in subparagraph (1)(b) of this rule must file a petition requesting such hearing within 30 days of receipt of the Commissioner's determination. Such petition must be in writing upon 8 1/2 x 11 inch paper, filed with the Commissioner in duplicate, addressed to the Board of Water Quality, Oil and Gas and must state in numbered paragraphs the basis of the appeal as required by the Administrative Procedures Act and regulations promulgated thereunder. If said petition is not filed within the time allowed, it shall not be heard.

Authority: T.C.A. §§ 69-3-101 et seq. and 4-5-201 et seq.

0400-40-01-.03 Commissioner's Responsibilities and Authority.

(1) Responsibilities

- (a) The responsibilities of the Commissioner are set out in detail in T.C.A. § 69-3-107. In general, the Commissioner is to "exercise general supervision and control over the quality of all state waters, administer and enforce all laws relating to pollution of such waters, and administer and enforce this part, and all standards, policies, rules and regulations promulgated thereunder."

- (b) Any delegation by the Commissioner to the Director pursuant to T.C.A. § 69-3-107(13) must be in writing.

- (c) Authority

1. Pursuant to the responsibility placed upon the Commissioner, he/she is granted the following remedies for violations of this act.

2. Complaints and Orders

Any complaint issued by the Commissioner pursuant to T.C.A. §§ 69-3-109 and 69-8-205 shall comply in form with the Tennessee Rules of Civil Procedure, Rule 10; and with Rule 5.02 with regard to Service of Process.

3. Assessment of Damages

Whenever the Commissioner assesses the liability of a violator of one or more of the provisions of the act, the damages to the state may include only those set out in T.C.A. § 69-3-116(a). The form will be that of a memorandum stating specifically events leading to damage to the state, probable cause, and conclusions drawn. Damages should be itemized and totaled, and the violator ordered to pay. Said assessment must be signed by the Commissioner, or by the Director for the Commissioner.

4. Civil Penalties

Whenever the Commissioner assesses civil penalties pursuant to T.C.A. § 69-3-115(a) he/she must do so in the form of a memorandum stating specifically those facts giving rise to the proposed assessment and in consideration of the factors determinative of its amount. The memorandum must be signed by the Commissioner.

5. Criminal Penalties

Prior to the issuance of a warrant for the arrest and prosecution of a violator of the act, the Commissioner shall authorize in writing a member or members of the Division to apply for a warrant or warrants for a specific charge stated therein, and pursue the same through to termination.

6. Injunctions

The complaint and accompanying plea for injunctive relief shall conform to the Rules of Tennessee Civil Procedure. Neither the Board nor the Commissioner need take administrative action prior to a plea for an injunction. The Board or the Commissioner may file a complaint and a plea for an injunction to enforce any order issued.

7. Other Remedies

T.C.A. § 69-3-118(b) states a savings clause; that is, it provides that the remedies provided for explicitly in the act do not stop the state or any person from pursuing existing remedies at equity, or common law, or statutory law to suppress nuisances, abate pollution, or recover damages resulting from such pollution.

(d) In conjunction with the stated remedies available to the Commissioner in subparagraph (c) of this paragraph, he/she is authorized to receive and act upon a written and signed complaint of any person alleging violations of a provision or provisions of the act by another person, in the manner set forth in T.C.A. § 69-3-118(a). The Commissioner may or may not act upon the complaint, depending upon his/her determination of it. The Commissioner shall determine whether any action shall be taken as a result of the complaint after making his/her own finding with respect to the facts alleged in the complaint, but in all instances he/she shall notify the complainant of his/her determination within 90 days. Should the Commissioner wish to act, he/she may choose any of the remedies detailed in subparagraph (c) of this paragraph. Should either the complainant or defendant wish to appeal the Commissioner's action to the board as set forth in T.C.A. § 69-3-118(a), said person shall make written petition to the board, filed with the commissioner in duplicate, and shall state in numbered paragraphs the action sought of the Commissioner, the Commissioner's determination, and supporting reasons why the Commissioner's determination and/or action should be overruled. The Department or any of its personnel shall not be obligated to assist a complainant toward preparing his/her case.

(e) The Commissioner is not obligated to pursue an administrative remedy prior to pursuing a judicial remedy. The only exception to this course of action is that the Commissioner may not pursue a right of action or remedy in existing common law or statutory law as provided for in T.C.A. § 69-3-118(b), where there is an administrative question involved. For the purpose of these regulations, an administrative question is defined as involving a matter which may be actionable at common law, but due to enactment of the act, the Commissioner of Environment and Conservation has been granted power and authority to take action thereon. The purpose of this exception is to insure that rights of action and/or remedies in existing common law and statutory law shall not be

inconsistent with the provisions of the act.

Authority: T.C.A. §§ 69-3-101 et seq. and 4-5-201 et seq.

0400-40-01-.04 Information - Procurement, Release and Distribution.

T.C.A. § 69-3-113 provides authority to the Board or Commissioner to seek and obtain pertinent information necessary to further the goals of the act. The following regulations shall serve to implement that Section.

(1) Waters

The provisions in T.C.A. § 69-3-113 shall apply to both intrastate and interstate waters, and to all other waters as defined in T.C.A. § 69-3-103(33).

(2) Release and Distribution

(a) All information compiled by the Division of Water Resources and recorded in its offices, is public information, except any information that has been declared by the Board or the Commissioner as representing or revealing a secret process, information, formula or method. The Commissioner shall not divulge information claimed to be confidential unless he/she first notifies the supplier of such information that it has been requested and offers the supplier opportunity to defend such classification. Information so declared shall be considered confidential, and shall be placed in a security file. In any event, such information shall not, for any reason, be available to persons other than board members, the Commissioner, and staff of the Division of Water Resources. Provided, however, that any confidential information shall be made available to the Administrator, and the Commissioner shall divulge to the public any of that information the administrator finds is not entitled to protection as a trade secret.

(b) All other recorded information will be available to the public pursuant to the following conditions:

1. During normal office hours of 8:00 a.m. - 4:30 p.m.
2. Under the observation of a member of the staff of the Division of Water Resources.
3. Copies of compiled records and information will be made available upon request at a cost based upon the requirements of Rule 0400-01-01-.01.
4. No recorded information shall be removed from the offices of the Division.

(c) Recorded transcripts of public hearings can be made available to parties to such hearing. Written transcripts are not available. In a public hearing, any interested person attending will be considered a party to the hearing.

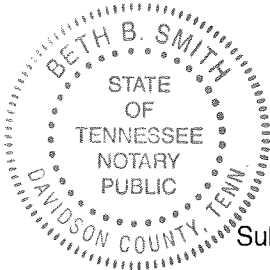
(d) Copies of general information material will be provided at no charge except as provided below. Any electronic versions of this material will also be provided free of charge. Such material includes the act, regulations adopted and approved by the Board, annual reports, leaflets, pamphlets and other similar educational materials available in multiple copies. When the supply of such materials is depleted, multiple copies thereof for wide-spread distribution will not be made by use of office duplicating equipment. A furnishing of multiple copies of such materials shall be delayed until another printing. Instead, individual copies may be provided upon request, at the discretion of the Division and at a cost based on the requirements of Rule 0400-01-01-.01.

(e) All charges for copies of records and information provided for herein shall be prepaid and payable to the Tennessee Department of Environment and Conservation.

(f) Public information may be made available electronically.

Authority: T.C.A. §§ 69-3-101 et seq. and 4-5-201 et seq.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.



My Commission Expires JULY 6, 2015

Date: 2/12/13

Signature: Sandra K. Dudley

Name of Officer: SANDRA K. DUDLEY

Title of Officer: DIRECTOR, WATER RESOURCES

Subscribed and sworn to before me on: 2/12/13

Notary Public Signature: Beth B. Smith

My commission expires on: July 6, 2015

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Filed with the Department of State on: 2/13/13

A handwritten signature in dark ink, appearing to read "Tre Hargett".

Tre Hargett  
Secretary of State

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